

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

SUPERANNUATION (MISCELLANEOUS) AMENDMENT ACT 2000

No. 41 of 2000

[Assented to 13 July 2000]

An Act to amend the Superannuation Act 1988.

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The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Superannuation (Miscellaneous) Amendment Act 2000*.
- (2) The *Superannuation Act 1988* is referred to in this Act as "the principal Act".

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Section 13 will be taken to have come into operation at the commencement of the principal Act.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

- (a) by inserting the following definition after the definition of "retrenchment pension" in subsection (1):

"salary", in relation to a contributor who is employed pursuant to a TEC contract, means that proportion of the value of the total remuneration package specified in the contract that has been prescribed by regulation for the purposes of this definition;;

- (b) by inserting before "includes all forms of remuneration" in the definition of "salary" second occurring in subsection (1) ", in relation to a contributor who is not employed pursuant to a TEC contract,";

- (c) by inserting after paragraph (d) of the definition of "salary" second occurring in subsection (1) the following paragraph:

(da) non-monetary remuneration referred to in subsection (2d);;

- (d) by inserting the following definition after the definition of "the Superannuation Funds Management Corporation of South Australia" in subsection (1):

"TEC contract" means a contract of employment between a contributor and his or her employer under which the value of the total remuneration package specified in the contract reflects the total employment cost to the employer of employing the contributor.;

- (e) by inserting the following subsections after subsection (2a):

(2b) A regulation prescribing the proportion of the value of the total remuneration package for the purposes of the first definition of "salary" in subsection (1)—

- (a) may prescribe different proportions in relation to old scheme contributors and new scheme contributors; and
- (b) in relation to a contributor whose salary would be less under the first definition of "salary" in subsection (1) than if it were determined under the second definition of "salary" in that subsection—may prescribe a proportion

to ensure that the value of the contributor's salary for the purposes of this Act is not less than it would be if determined under the second definition of "salary".

(2c) Non-monetary remuneration received by a contributor as the result of the sacrifice by the contributor of part of his or her salary in accordance with—

- (a) an award; or
- (b) an enterprise agreement prescribed by regulation for the purpose of this subsection,

is included in the second definition of "salary" in subsection (1).

(2d) All non-monetary remuneration, except for non-monetary remuneration referred to in subsection (2c), is excluded from the second definition of "salary" in subsection (1).

(2e) For the purposes of determining the amount of the salary received by a contributor who is in receipt of non-monetary remuneration of a kind referred to in subsection (2c), the value of the non-monetary remuneration of that kind will be taken to be the amount of salary sacrificed by the contributor in order to receive that remuneration.

(2f) A regulation referred to in subsection (2c)(b) may prescribe an enterprise agreement by reference to the agreement or by reference to a class to which the agreement belongs.;

- (f) by striking out "actual" from paragraph (a) of subsection (3).

Amendment of s. 5—Superannuation arrangements

4. Section 5 of the principal Act is amended—

- (a) by inserting the following subsection after subsection (1a):

(1b) An arrangement may be varied at any time by agreement between the Board and the instrumentality, agency, authority, body or person.;

- (b) by inserting the following subsection after subsection (2):

(2a) Where an instrumentality or agency of the Crown that has entered into an arrangement with the Board under this section ceases to be an instrumentality or agency of the Crown, the Minister may by written notice to the Board and to the former instrumentality or agency of not less than one month—

- (a) declare that benefits will cease accruing to contributors in respect of their employment with the former instrumentality or agency; and
 - (b) vary the terms of the arrangement in such manner as he or she thinks fit.;
- (c) by striking out "An instrumentality" from subsection (3) and substituting "Subject to subsection (4), an instrumentality";

(d) by striking out from subsection (3) "and in that event the contributors concerned will be taken for the purposes of this Act to have resigned from employment with the instrumentality, agency, authority, body or person";

(e) by inserting the following subsections after subsection (3):

(4) A declaration cannot be made under subsection (3)—

(a) without the approval in writing of a majority of those persons who—

(i) are contributors by virtue of the arrangement; and

(ii) are currently employed by the instrumentality, agency, authority, body or person; and

(b) unless the Board has given its approval to the declaration.

(5) Before giving its approval under subsection (4)(b), the Board must have obtained from an actuary an actuarial assessment of the account (if any) established to meet the employer component of benefits that have accrued to employees of the instrumentality, agency, authority, body or person under this Act.

(6) When giving its approval under subsection (4)(b), the Board must be satisfied on the basis of the actuary's assessment that the amount standing to the credit of the account will be sufficient to meet the employer component of benefits.

(7) The following provisions apply on the cessation of the accrual of benefits under subsection (2a) or (3):

(a) those contributors currently employed by the instrumentality, agency, authority, body or person who are of or over the age of 60 years will be taken for the purposes of this Act to have retired from employment; and

(b) those contributors currently employed by the instrumentality, agency, authority, body or person who have not reached the age of 60 years will be taken for the purposes of this Act to have resigned from employment; and

(c) section 28 or 39 (as the case requires) applies to and in relation to a contributor referred to in paragraph (b) despite the fact that he or she is of or over the age of 55 years; and

(d) a contributor referred to in paragraph (b) who has elected to preserve his or her benefits is not entitled to them (except on account of incapacity) until—

(i) he or she has reached the age of 55 years and has ceased to be employed by the instrumentality, agency, authority, body or person; or

(ii) he or she has reached the age of 60 years.

Amendment of s. 20B—Payment of benefits

5. Section 20B of the principal Act is amended by inserting after "the contributor's contribution account" in subsection (2) "or against the Fund".

Amendment of s. 21—Reports

6. Section 21 of the principal Act is amended—

- (a) by striking out "the relevant triennium on" from subsection (4) and substituting "the relevant triennium";
- (b) by striking out "the cost" from paragraph (a) of subsection (4) and substituting "on the cost";
- (c) by striking out paragraph (b) of subsection (4) and substituting the following paragraph:
 - (b) estimating the proportion of future benefits under Part 5 that can be met from the Fund.

Amendment of s. 23—Contribution rates

7. Section 23 of the principal Act is amended—

- (a) by striking out "A contributor" from subsection (2) and substituting "Subject to subsection (2a), a contributor";
- (b) by inserting the following subsections after subsection (2):

(2a) A contributor who is employed pursuant to a TEC contract must contribute at the contributor's standard contribution rate or at a higher rate referred to in subsection (2) unless he or she was contributing at a lower rate during the financial year in which the term of the contract commenced in which event he or she must contribute at that rate or a higher rate referred to in subsection (2).

(2b) Subsection (2a) operates in relation to the financial year following the financial year in which section 5A of the *Superannuation (Miscellaneous) Amendment Act 2000* comes into operation and in relation to subsequent financial years.

Amendment of s. 34—Retirement

8. Section 34 of the principal Act is amended—

- (a) by striking out from subsection (1) ", and whose contribution period as at the age of retirement was 300 months or more or whose membership of the Scheme antedated the commencement of the repealed Act" and substituting "and who is not entitled to a pension under subsection (2),";
- (b) by striking out from subsection (2) "but whose contribution period as at the age of retirement was less than 300 months is entitled to a pension calculated as follows" and substituting "is entitled to a pension calculated in accordance with the following formula if the number of months between the date of the contributor's acceptance as a contributor and the date on which the contributor reached the age of retirement was less than 300".

Amendment of s. 39—Resignation and preservation of benefits

9. Section 39 of the principal Act is amended—

- (a) by striking out "the age of 30 years" from subsection (7) and substituting "the prescribed age";

- (b) by striking out the definition of "M" in the formula in subsection (7) and substituting the following definition:

M is—

- (a) in the case of a contributor for whom the age of retirement is 55 years—360;
 - (b) in the case of a contributor for whom the age of retirement is 60 years—
 - (i) in the case of a retirement pension where the contributor is 55 years or more but less than 60 years when the pension first becomes payable— $300 + n$;
 - (ii) in all other cases—360;
- (c) by striking out the definition of "NM" from the formula in subsection (7) and substituting the following definition:

"NM" is the number of months between the date on which the contributor was accepted as a contributor and—

- (a) in the case of a retirement pension—the date on which the pension first became payable or the date on which the contributor reached or will reach the age of retirement whichever occurs first;
 - (b) in all other cases—the date on which the contributor will reach, or would have reached, the age of retirement;
- (d) by striking out "30 years of age" from the definition of "S" in the formula in subsection (7) and substituting "the prescribed age";
- (e) by inserting the following subsection after subsection (7):

(7a) In subsection (7) "the prescribed age" means—

- (a) in relation to a contributor for whom the age of retirement is 55 years—the age of 25 years;
- (b) in relation to all other contributors—the age of 30 years.

Insertion of s. 42A

10. The following section is inserted after section 42 of the principal Act:

Offer of lump sum to certain invalid pensioners

42A. (1) If—

- (a) the Board is satisfied on the advice of two medical practitioners that an invalid pensioner who has not reached the age of retirement is fit to be employed in full time or part time employment; but

- (b) appropriate employment has not been offered to the pensioner under section 42,

the Board may offer to pay a lump sum to the pensioner instead of his or her pension.

- (2) The amount of the lump sum will be the greater of the following:

- (a) an amount equivalent to the amount that would be produced by commutation of the whole of a pension calculated as follows:

$$P = \frac{P_1 \times (360 - M)}{360}$$

Where—

P is the pension

P_1 is the pension to which the pensioner was entitled immediately before the payment of the lump sum (expressed as an annual amount)

M is the number of complete months between the time when the lump sum is paid and when the pensioner would reach the age of retirement

- (b) an amount equivalent to three times the amount of the pensioner's annual pension immediately before the lump sum is paid.

- (3) For the purposes of the commutation referred to in subsection (2)—

- (a) the commutation factors applicable on the commutation of a retirement pension will be used; and
- (b) the contributor's age will be taken to be his or her age when the lump sum is paid or 55 years whichever is the greater.

(4) If the pensioner accepts the Board's offer under subsection (1), the pensioner's right to future payments of the pension and all derivative rights cease on payment of the lump sum.

Substitution of s. 43A

11. Section 43A of the principal Act is repealed and the following section is substituted:

Proportion of pension etc., to be charged against contribution account etc.

43A. (1) A proportion of a pension or lump sum paid to, or in relation to, a contributor will be charged against the contributor's contribution account or, if the account has been closed, will be charged against the relevant division of the Fund.

(2) The proportion for the purposes of subsection (1) will be equivalent to the proportion of the future benefits payable under this Part that can, in the opinion of the Board, be met from the Fund.

(3) The opinion of the Board must be based on the most recent triennial report under section 21(4).

Insertion of s. 43AA

12. The following section is inserted in Part 5 after section 43A of the principal Act:

Closure of contribution accounts

43AA. (1) The Board may close the account of a contributor if—

- (a) the contributor has retired or resigned from employment and is in receipt of a pension under this Part; or
- (b) the contributor's employment has been terminated by retrenchment or on account of invalidity and the contributor—
 - (i) has reached the age of retirement; and
 - (ii) is in receipt of a pension under this Part; or
- (c) the contributor has died.

(2) If, after a contribution account has been closed under subsection (1), a benefit becomes payable under this Part that depends wholly or partly on the balance standing to the credit of the account, the benefit will be determined on the basis of the balance that would have stood to the credit of the account if it had not been closed.

Amendment of s. 45—Effect of workers compensation, etc., on pensions

13. Section 45 of the principal Act is amended—

- (a) by striking out "Where in relation to a particular period" from subsection (1) and substituting "Where at any time during a financial year";
- (b) by striking out "the pensioner is also receiving or entitled to receive income ("other income") of one or both of the following kinds" from paragraph (b) of subsection (1) and substituting "the contributor is also receiving or entitled to receive income of one or both of the following kinds";
- (c) by striking out paragraph (d) of subsection (1) and substituting the following paragraphs:
 - (d) the Board must estimate the income (if any) that the contributor is likely to receive during the financial year from remunerative activities engaged in by the contributor;
 - (e) it must be assumed that the income estimated by the Board will be paid at a uniform rate throughout the financial year;
 - (f) if the aggregate of the pension and the workers compensation payments (if any) and the income from remunerative activities (if any) (paid at the rate assumed, by paragraph (e)) exceeds the contributor's notional salary, the pension will be reduced by the amount of the excess and, if that amount equals or exceeds the amount of the pension, the pension will be suspended;

- (g) at the end of the financial year the Board must determine the income from remunerative activities actually received by the contributor during that year and if, on the basis of the income actually received—
 - (i) the pension has been underpaid, an amount equivalent to the underpayment must be paid to the contributor or if the contributor has died, to his or her estate;
 - (ii) the pension has been overpaid, the amount overpaid may be deducted from future payments of pension or from any other amount to be paid to the contributor under this Act or, if the contributor has died, the amount overpaid is a debt due by the contributor's estate to the Treasurer.;
- (d) by striking out subsection (1a) and substituting the following subsection:
 - (1a) Income of a kind referred to in subsection (1)(b)(i) and (ii) will—
 - (a) in the case of workers compensation payments—be taken to include payments lawfully made to some person other than the contributor;
 - (b) in the case of income from remunerative activities—be taken to include—
 - (i) the monetary value of income that is in a non-monetary form; and
 - (ii) income lawfully paid to some person other than the contributor.;
- (e) by striking out "Where in relation to a particular period" from subsection (2) and substituting "Where";
- (f) by striking out "subsection (1)(d)" twice occurring in subsection (6) and substituting, in each case, "subsection (1)(f)".

Amendment of s. 48—Repayment of contribution account balance and minimum benefits

14. Section 48 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

- (2) Where—
 - (a) a contributor's employment terminates or is terminated; and
 - (b) —
 - (i) a pension is paid under this Act to the contributor; or
 - (ii) a pension is paid under this Act to the contributor and then, on the contributor's death, a pension is paid under this Act to the spouse or an eligible child of the contributor; or
 - (iii) the contributor's employment is terminated by death and a pension is paid under this Act to the spouse or an eligible child of the contributor; and

- (c) the pension, or the last of the pensions to be payable, ceases before the expiration of the period of 4.5 years after the contributor's employment terminated or was terminated and no actual or prospective right to a pension exists and no other benefit is payable under this Act,

an amount determined in accordance with subsection (2a) is payable to the contributor's estate.

(2a) The amount referred to in subsection (2) is the amount of the pension or pensions that would have been payable to, or in relation to, the contributor during the period referred to in subsection (2)(c) if the pension or pensions had not ceased, reduced by—

- (a) the amount of the lump sum, or the aggregate of the lump sums, (if any) paid on commutation of the pension or pensions; and
- (b) the amount of the pension or pensions actually paid to, or in relation to, the contributor.

(2b) When computing the amount of the pension or pensions that would have been payable during the period referred to in subsection (2)(c)—

- (a) it will be assumed that the pension or pensions were not reduced by commutation or reduced or suspended under section 45; and
- (b) the provisions of this Act for indexation of pensions will be ignored.

Insertion of s. 51A

15. The following section is inserted after section 51 of the principal Act:

Method of making contributions

51A. (1) Contributions to be made to the Treasurer by a contributor under section 23 are to be deducted from the contributor's salary and paid to the Treasurer.

(2) A contributor cannot make any contribution to the Scheme in addition to the contributions he or she makes under section 23.

Amendment of Schedule 1B

16. Schedule 1B of the principal Act is amended by striking out subclause (7) of clause 4 and substituting the following subclauses:

(7) Where—

- (a) a person who was a member of the Electricity Industry pension scheme before being transferred to the State Scheme under subclause (1) or the spouse or eligible child of such a person is entitled to a pension under section 39(5), the pension will—
- (i) in the case of a retirement pension or an invalid pension payable to the person—be equivalent to his or her notional pension;
- (ii) in the case of a pension payable to a spouse or eligible child—be determined in accordance with section 38 on the basis that the person's notional pension as defined in subclause (8) is the notional pension referred to in section 38;

- (b) the estate of a person referred to in paragraph (a) is entitled to a lump sum under section 39(5)(e) or (f), the lump sum will—
- (i) where section 39(5)(e) applies—be the amount stated in section 39(8a);
 - (ii) where section 39(5)(f) applies—be the aggregate of the following amounts:
 - (A) an employee component (to be charged against the person's contribution account) equivalent to the amount standing to the credit of that account; and
 - (B) an employer component being an amount equivalent to 1.8 times the employee component.

(8) In subclause (7)—

"notional pension" in relation to a person means the pension that the person would have been entitled to receive under the Electricity Industry pension scheme if he or she had become entitled to receive that pension immediately before being transferred to the State Scheme adjusted to reflect changes in the Consumer Price Index from the date on which the person was transferred;

"spouse" means a person referred to in section 38(1a).

(9) A person who was a member of either of the contributory lump sum schemes before being transferred to the State Scheme under subclause (1) will (or, where the person has died, the spouse or estate of the person will) be entitled to a lump sum under section 28(2) that is the aggregate of the following amounts:

- (a) an employee component (to be charged against the person's contribution account) equivalent to the amount standing to the credit of that account; and
- (b) the person's notional employer component adjusted to reflect changes in the Consumer Price Index from the date on which the person was transferred.

(10) In subclause (9)—

"notional employer component" in relation to a person means the employer component that the person would have been entitled to receive under the contributory lump sum scheme if he or she had become entitled to receive that component immediately before being transferred to the State Scheme;.